

IDAHO PERSONNEL COMMISSION  
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**IDAHO PERSONNEL COMMISSION**

**STATE OF IDAHO**

JANE R. ANDERSON,	)	
	)	
Petitioner/Appellant,	)	Case No. CV OC 0208229D
	)	(IPC Case No. 97-10)
vs.	)	
	)	ORDER ON APPELLANT'S
DEPARTMENT OF TRANSPORTATION,	)	CORRECTIONS TO THE
	)	TRANSCRIPT AND RECORD
Respondent.	)	
_____	)	

Absent a stipulation between the parties, the Idaho Personnel Commission ("Commission") has reviewed Appellant's filing on January 29, 2003 titled "Corrections to the Transcript and Record Pursuant to I.R.C.P. 84(j) and 84(l)". It is attached hereto, along with Respondent's Response, thereto, and both are included in the record for the Court on Petition for Review pursuant to I.R.C.P. 84(j). Also included is a copy of the tape recording of the July 8, 2002 hearing. The Commission delegated the review of the transcript and tape recording of the July 8, 2002 hearing before the Commission to Chairman Brassey and he has so reviewed for purposes of the Commission's ruling on Appellant's Objection One.

**Objection One**

With respect to Appellant's Objection One (proposed corrections to the transcript), the Commission rules as follows:

The Commission GRANTS Appellant's proposed corrections as noted in Exhibit A to her filing, on the following pages and lines:

Page 6, line 12 – Appellant mistakenly labeled it in Exhibit A as “Page 6, line 2” – replace “indiscernible” with “instead, forced”;

Page 6, line 15 – Appellant mistakenly labeled it in Exhibit A as “Page 6, line 5” – replace “indiscernible” with “adopting the lesser”;

Page 8, lines 7 & 12;

Page 9, line 12- Appellant mistakenly labeled it in Exhibit A as “Page 8, line 12”- replace “several” with “seven”;

Page 11, lines 18, 19 & 24;

Page 12, lines 5 & 9;

Page 12, line 11- Commissioner Don Miller says “That’s right” and this was omitted.

Page 17, lines 1 & 18

Page 18, lines 6 & 7;

Page 18, lines 9, 11 & 16- replace “Mr. Longetieg” with “Commissioner Weineke”, speaking (misattribution);

Page 19, lines 1 & 6;

Page 19, lines 2 & 7 – “replace “Mr. Longetieg” with “Mr. Chairman” speaking (misattribution);

Page 20, line 20–“replace “Mr. Longeteig” with “Commissioner Weineke”, speaking (misattribution);

Page 21, lines 13 & 18;

Page 22, line 9;

Page 23, line 5;

Page 25, lines 4 & 5;

Page 28, lines 6, 17 & 24;

Page 29, lines 7 & 8;

Page 31, line 17 – “replace “indiscernible” with “and over”[sleeping];

Page 35, lines 3 & 6;

Page 36, line 14 – replace “Mr. Longetieg” with “Commissioner Weineke”, speaking (misattribution);

Page 37, line 22 - replace “indiscernible as” with “Jane has categorized”.

The Commission DENIES Appellant's proposed corrections as noted in Exhibit A to her filing, on the following pages and lines:

Page 6, line 8 – transcript is correct as is;

Page 8, line 20 – transcript is correct as is;

Page 14, line 4 – Commission cannot discern speaker;

Page 14, line 8 – transcript is correct as is;

Page 28, line 5 – Commission cannot discern;

Page 29, line 5 – transcript is correct as is

Page 36, line 18 – Commission cannot discern.

With respect to Appellant's request of a "list of the IPC members present at the review hearing", the Commission refers Appellant to its signed Decision and Order on Petition for Review filed September 9, 2002. All Commissioners were present.

### **Objection Two**

Appellant argues the record cannot be certified as complete without an exception stating that Hearing Officer Bergquist did not record the oral arguments of the parties on Respondent's Motion for Summary Judgment on February 14, 2000. The Commission disagrees. There was no recording, electronically or otherwise, of the **prehearing** motion for summary judgment. Therefore, no tape recording or transcript of the prehearing motion for summary judgment exists in the record. This does not render the certification of the record incomplete. The Court has the entire record of the proceedings in this matter. The record is what it is.

Further, while I.C. § 67-5316(5) requires "[a] verbatim record of the proceedings at hearings before . . . a hearing officer shall be maintained either by electrical devices or by stenographic means", prehearing motions that do not involve the taking of evidence do not fall within the statute's mandate nor is it required by applicable rule. What the statute contemplates is the recording of the **evidentiary** hearings before the hearing officer; the hearing on the merits, where evidence will be heard and the "trial" of the matter conducted. However, proceedings where no evidence is presented such as on a prehearing motion for summary judgment, where no facts are in dispute, there is no need for an electronic or stenographic recording. IDAPA 04.11.01.565, (applicable to Commission proceedings via IDAPA 15.04.01.201.01) further evidences this notion providing "[t]he presiding officer may consider and decide prehearing motions with or without oral argument or hearing."

Hearing Officer Bergquist was not required to allow oral argument on the prehearing motion for summary judgment and although he did, he was not required to record it. Arguments of the parties are not evidence. All evidence presented for purposes of the motion for summary judgment is preserved in the record that has been lodged with the Court.

Objection Two is DENIED.

IT IS SO ORDERED.

DATED THIS \_\_\_\_\_ day of February, 2003.

BY ORDER OF THE  
IDAHO PERSONNEL COMMISSION

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Mike Brassey, Commission Chair

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by the method stated below on this \_\_\_\_ day of February, 2003.

### FIRST CLASS MAIL

Jane Anderson  
405 O'Farrell  
Boise, Idaho 83702

Cheri Bush  
Deputy Attorney General  
Civil Litigation Division  
Statehouse Mail

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Secretary to Idaho Personnel Commission